

Office of the Assistant Secretary, HUD

§ 950.715

\$2.00. Assuming that the local inflation factor is 4.5 percent (expressed as 1.045), the AEL for FY 1988 is \$69.16, computed as follows:

1. Allowable Expense Level for FY 1987	\$68.18
2. Delta (or Decrease) in Formula Expense Level	(2.00)
3. Sum (line 1 plus line 2)	66.18
4. Local Inflation Factor	1.045
5. Allowable Expense Level for FY 1988 (line 3 multiplied by line 4)	69.16

It should be noted that the Delta in line 2 of the example reflects the application of the formula weights, constant, and local inflation factor for the requested budget year applied first to the IHA characteristics for the current budget year and then to the IHA characteristics for the requested budget year, to determine the respective Formula Expense Levels. The local inflation factor shown on line 4 of the example is the same one used in determining the Formula Expense Levels.

(5) *Allowable Expense Level for budget years after the first budget year under PFS that begins on or after April 1, 1992.* For each budget year after the first budget year under PFS that begins on or after April 1, 1992, the AEL shall be computed as follows:

(i) The Allowable Expense Level shall be increased by any increase to the AEL approved by HUD under § 950.720(c);

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5 percent); and

(B) If the IHA has experienced a change in the number of units in excess of 5 percent or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph (d)(5)(ii)(B) of this section, it shall use the increase (decrease) between the Formula Expense Level for the Current Budget Year and the Formula Expense Level for the Requested Budget Year. The IHA's characteristics that shall be used to compute the Formula Expense Level for the Current Budget Year shall be the same as those that applied to the Requested Budget Year when the last adjustment to the AEL was made based on this paragraph (d)(5)(ii)(B) of this section, except that the number of interim years in which the .5 percent adjustment to the AEL was made under paragraph (d)(5)(ii)(A) of this section shall be

added to the average age that was used for the last adjustment.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of Allowable Expense Level for budget years after the first budget year under PFS.* HUD may adjust the AEL of budget years after the first year under PFS under the provisions of §§ 950.710(b) or 950.720(c).

§ 950.715 Computation of Utilities Expense Level.

(a) *General.* In recognition of the rapid rises that occur in utilities costs, the wide diversity among IHAs as to types of utilities services used, the manner in which utilities payments are allocated between IHAs and tenants, and the fact that utilities rates charged by suppliers are beyond the control of the IHA, the PFS treats utilities expenses separately from other IHA expenses. Utilities expenses are, therefore, excluded from the IHA's Allowable Expense Level, and the PFS provides for computation of the amount of operating subsidy for utilities costs based upon a calculated utilities expense of each IHA. Accordingly, the IHA's Utilities Expense Level for the requested budget year shall be computed by multiplying the Allowable Utilities Consumption Level (AUCL) per-unit per-month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The currently applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the operating budget is submitted to HUD will be used as the utilities rates for the requested budget year, except that when the appropriate utility commission has, before the date of submission of the operating budget to HUD, approved and published rate changes to be applicable during the requested budget year, the future approved rates may be used as the utilities rates for the entire requested budget year.

(2) If an IHA takes action, such as a well-head purchase of natural gas, or administrative appeals or legal action

beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the IHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the IHA may be permitted to retain one-half the annual cost savings, if the actions continue to be cost-effective. See also paragraph (f) of this section and § 950.730(c).

(c) *Computation of "Allowable Utilities Consumption Level."* The Allowable Utilities Consumption Level (AUCL) used to compute the Utilities Expense Level of an IHA for the requested budget year generally will be based upon the availability of consumption data. For project utilities for which consumption data are available for the entire rolling base period, the computation will be in accordance with paragraph (c)(1) of this section. If data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project for which the IHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the AUCL may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of an IHA's projects is the sum of the amounts determined using all of the paragraphs in this paragraph (c), as appropriate.

(1) *Rolling Base Period System.* For project utilities with consumption data for the entire rolling base period, the AUCL is the average amount consumed per unit per month during the rolling base period, adjusted in accordance with paragraph (d) of this section. The IHA shall determine the average amount of each of the utilities consumed during the rolling base period (i.e., the 36-month period ending 12 months prior to the first day of the requested budget year).

(i) *IHA fiscal years affected.* The rolling base period shall be used to compute the AUCL submitted with the op-

erating budgets. (ii) An example of a rolling base is as follows:

IHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1-1-92	12-31-92 (1st year).	1-1-88	12-31-90
1-1-93	12-31-93 (2nd year).	1-1-89	12-31-91

(2) Alternative method if data is not available for the entire rolling base period:

(i) If the IHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole rolling base period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its rolling base period to the HUD Area ONAP for approval. If this is not possible, it shall submit consumption data for the last 12 months of its rolling base period. The IHA also shall submit a written explanation of the reasons that data for the whole rolling base period is unavailable.

(ii) In those cases when an IHA has not maintained or cannot recapture consumption data for a utility for the entire rolling base period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the rolling base period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each IHA, other than those IHAs defined as new projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month rolling base period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all IHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If an IHA cannot develop the consumption data for the rolling base period or for 12 or 24 months of the rolling base period, either from its own project(s) data, or by using comparable consumption data the actual per-unit

per-month utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A new project, for the purpose of establishing the rolling base period and the Utilities Expense Level, is defined as either:

(A) A project that had not been in operation during at least 12 months of the rolling base period, or a project that enters management after the rolling base period and before the end of the requested budget year; or

(B) A project that during or after the rolling base period, has experienced conversion from one energy source to another, interruptible service, deprogrammed units, a switch from tenant-purchased to IHA-supplied utilities, or a switch from IHA-supplied to tenant-purchased utilities.

(ii) The actual consumption for new projects shall be determined so as not to distort the rolling base period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level (AUCL).* (i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if an IHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the AUCL for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it shall be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (g) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the IHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two

years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities Expense Level when consumption data for the full rolling base period is unavailable.* If an IHA does not obtain the consumption data for the entire rolling base period, or for 12 or 24 months of the rolling base period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Area ONAP approval to use actual per-unit per-month utility expenses. These expenses shall exclude utilities labor and other utilities expenses. The actual per-unit per-month utility expenses shall be taken from the year-end statement of operating receipts and expenditures Form HUD-52599 (Office of Management and Budget approval number 2577-0067), prepared for the IHA fiscal year that ended 12 months before the beginning of the IHA requested budget year (e.g., for an IHA fiscal year beginning January 1, 1983, the IHA would use data from the fiscal year ended December 31, 1981). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual per-unit per-month utility expenses.

(e) *Adjustments.* IHAs shall request adjustments of utilities expense levels in accordance with § 950.730(c), which requires an adjustment based upon a comparison of actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If an IHA undertakes energy conservation measures (including measures to save water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary,

such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the IHA may qualify for one of two possible incentives under this part. For an IHA to qualify for these incentives, it shall obtain HUD approval. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the IHA's payments to be dependent on the cost savings it realizes, the IHA shall use at least 50 percent of the cost savings to pay the contractor. With this type of contract, the IHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 950.730(c)(2)(ii).

(2) If the contract does not allow the IHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the IHA will be able to retain part of the cost savings, in accordance with § 950.730(c)(2)(i); and the IHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the improvement loan during the term of the contract, in accordance with § 950.730(f).

[60 FR 18186, Apr. 10, 1995, as amended at 61 FR 51182, Sept. 30, 1996]

§ 950.720 Other costs.

(a) *Costs of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the PFS. However, the IHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has been funded by subsidy in a prior year. The IHA's estimate of cost of the independent audit is subject to adjustment by HUD. If the IHA requires assistance in determining the amount of cost to be estimated, it should contact the HUD Area ONAP.

(2) An IHA that is required by the Single Audit Act (31 U.S.C. 7501-7507) (see 24 CFR part 44) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The amount shall be prorated between the IHA's development cost budget and one or all of its operating budgets, as appropriate. The estimated cost of an independent audit, applicable to the operations of IHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 950.705.

(3) An IHA that is exempt from the audit requirements of the Single Audit Act (31 U.S.C. 7501-7507) (see 24 CFR part 44) may receive operating subsidy to offset the cost of an independent audit chargeable to operations (after the end of the initial operating period) if the IHA chooses to have an audit.

(b) (1) *Costs attributable to units approved for deprogramming and vacant* may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for IHA-related activities are not eligible for inclusion. In determining the PFS operating subsidy, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the IHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Performance Funding System calculation in which the IHA requests operating subsidy for these units. If the IHA requires assistance in this matter, the IHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated below, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be